residence of both principal and attorney in occupied areas would affect the validity of the power of attorney. But it is contended that the residence of one in occupied territory and the other in unoccupied territory would permanently put an end to the relationship.

The principal authority cited is the *Sovfracht* case[1] which will no doubt be the guiding authority in these matters for the future. That case definitely decides that the residence of either principal or agent in occupied territory puts an end to the relation of principal and agent. I personally take this to be absolute at least of the time being.

The case of *Tingley v. Muller*[2] if it is still good law, would be authority for the proposition that the special kind of agency created by a power of attorney might be an exception, and if that were so, I do not consider that the fact that the power of attorney was expressed to be irrevocable could make any difference, as, surely, agreement between the parties could not override questions of public policy. So I take the case to be overruled. However, I do not take the question of whether the authority is permanently abrogated or merely suspended to be finally settled, as, although the language used in the House of Lords suggested finality, it was not material to the dispute between the parties. In fact Lord Wright suggested that a licence might confer power to take proceedings on a company domiciled in enemy territory and presumably to revive the retainer of their solicitors. In the case of *Meyer v. Dreyfus*[3] it would appear that a licence to trade was regarded as reviving the powers of an agent.

But even assuming that the power of the agent is not revived, I find difficulty in giving effect to the proposition advanced by the defendants on the facts as known. The basis of the contention is that at some moment or other one of the parties must have been in occupied territory and the other outside. To decide when territory becomes occupied is to decide a difficult and complicated question of fact. It is not merely the question of the presence of the forces of one side and the absence of those of the other; to constitute occupation one cannot regard the fluctuations of a campaign but must look for a certain element of permanency. On the evidence before me I am not prepared to decide that such a state of affairs was reached at a different date in the case of the place of residence of the principal and of the agent.

There must, therefore, be judgment for plaintiff with costs.

Order for possession.

HONG TAY vs. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) Oct. 19, 1946]

Tobacco Duties Ordinance (Cap. 222) Sections 22 (1) and 55 — Forfeiture of Vessel of less than 100 tons burden in which dutiable cargo is found — Notice to owner or agent.

The accused was convicted under Section 22 (1) of the Tobacco Duties Ordinance for possession of dutiable tobacco. After the accused was convicted and fined, the learned magistrate ordered the motor-sampan in which the tobacco was found to be confiscated under Section 55 of the same Ordinance. It was against this order of confiscation that the appeal was brought. It appeared that in making the order of confiscation the learned magistrate did not give an opportunity to the owner or the agent to show cause why the vessel should not be forfeited.

Held, that before an order for confiscation of a vessel of under 100 tons burden can be made under Section 55 (2) of the Tobacco Duties Ordinance, the Court must give the owner or agent thereof an opportunity of showing cause why such vessel should not be confiscated and as no such opportunity was given to the owner or agent in this case, the order of confiscation must be set aside.

C. F. J. Ess for the appellant.

A. W. Bellamy for the respondent.

Murray-Aynsley, C.J. :—This was a tobacco smuggling case. The accused was charged and convicted under section 22 (1) of Cap. 222. After he was convicted and fined, it was further ordered that a motor sampan in which the tobacco was found be confiscated under section 55 of the same Cap. It was against this part of the sentence that an appeal was brought.

By section 55 (2) it is provided that where tobacco . . . . is found in any vessel of less than 100 tons (which was the case here) such vessel . . . subject to the provisions of sub-section 3, shall be forfeited unless it is proved to the satisfaction of the Court that the offence was, or was being, committed without the knowledge, consent or connivance of the owner, agent or master or other person for the time being in command or charge of the vessel.

Sub-section 3 provides that no vessel shall be forfeited under sub-section 2 unless the Court shall have given the owner or agent thereof an opportunity of showing cause why such vessel should not be forfeited. It appeared that the vessel belonged to a registered owner in Siam and was chartered by way of demise to a kongsi of which the appellant was a partner. Another person charged was an engineer employed by the appellant. It appears that there was no evidence that either of these persons was the agent of the owner within the meaning of sub-section 3.

As no opportunity was given to the owner or agent to show cause, such part of the order as related to forfeiture of the sampan must be set aside.

Order of confiscation set aside.